

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

&

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WA.No. 94 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.365/2007 Dated
03/01/2007
.....

APPELLANT: PETITIONER:

M/S. A.J. DISTILLERIES,
PLOT NO.289A/424, INDUSTRIAL AREA, BAIKAMPADY,
MANGALORE-575 011, REPRESENTED BY ITS MANAGER,
SHRI D.VISWANATHA SHETTY.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS: RESPONDENTS:

1. THE ASSISTANT COMMISSIONER (KGST),
SPECIAL CIRCLE-II, KOZHIKODE.
2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, P.O. ERANHIPPALAM, KOZHIKODE.
3. THE DEPUTY COMMISSIONER, D.K.,MANGALORE.
4. THE TAHSILDAR,
MANGALORE TALUK, MANGALORE.

BY ADV. SRI. SANDESH RAJA, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

=====

W.A. NO. 94 OF 2007

=====

Dated this the 15th day of January 2007

JUDGMENT

Abdul Gafoor,J

Assailing the assessment order, the appellant attempted a statutory appeal and also an order of stay. During the pendency of the appeal, the stay petition was taken up and Ext.P8 order was passed. Ext.P8 is a conditional order directing the appellant to pay 50 per cent of the tax liability. It was contended, assailing Ext.P8, that the appellate authority passed the stay order without considering the grounds urged. When a prima facie case has been shown, the appellate authority has to pass an unconditional stay order. In this regard the decision reported in **Alok Spices vs. Deputy Commissioner (Appeals) Sales Tax, Ernakulam (71 STC 347)** was relied on. It is submitted that the appellate authority, while considering the stay application, was bound to consider the matter on merit as well.

2. A reading of the judgment impugned shows that the learned single Judge has considered the matter in the right perspective. According to us, the appellate authority had exercised its discretion, while passing Ext.P8 interim order. That is not a matter to be subjected to strict judicial review. The appellate authority is a quasi judiciary. When it has passed an interim order, it should have understood the matter and borne in mind the grounds alleged in the appeal as well. The challenge against the order was rightly repelled by the learned single judge. That is not a matter to invoke the appellate jurisdiction vested under section 5 of Kerala High Court Act.

The writ appeal is dismissed accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

